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16 Attorneys for Plaintiffs

17
18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

20 DARREN “PETE” WHITE.

21
22 PLAINTIFFS,

23 vs.

24 CITY OF LOS ANGELES, et al.,

25
26 DEFENDANTS.

27 Case No.: 117-CV-3306 SJO MRW

28 **JOINT RULE 16(B)/26(F) REPORT**

DATE: NOVEMBER 13, 2017

TIME: 8:30 A.M.

CTRM: 10C

HON. S. JAMES OTERO

1 The parties to the above-captioned action submit their Joint Report to the
 2 Court in advance of the Scheduling Conference set for November 13, 2017 at 8:30
 3 a.m. before the Honorable S. James Otero, district judge presiding in Courtroom 10C
 4 of the United States District Court for Los Angeles, California.

5 **1.a. Statement of the Case:**

6 **1. Plaintiffs' Statement of the Case**

7 This case involves the arrest and detention of Plaintiff ostensibly for a
 8 violation of California Penal Code 148, "resisting arrest." At the time of the arrest,
 9 Plaintiff was videotaping a police action occurring on a public sidewalk in the Skid
 10 Row section of downtown Los Angeles. Plaintiff was located behind a yellow tape
 11 put up by the police. He was standing approximately 80 feet from where the police
 12 were removing a homeless individual from a tent on 6th Street, approximately a half
 13 block north of San Julian. Plaintiff was taken to the Central Division and then to the
 14 Metropolitan Detention Center. He was held for approximately four hours before
 15 being released with a notice to appear in criminal court. No charges were filed.
 16 Plaintiff alleges that his arrest violates his First Amendment rights and, in addition,
 17 the 2015 amendment to California Penal Code Sec. 148 expressly codifying clearly
 18 established law prohibiting arrests for videotaping the police in public places absent
 19 circumstances that would vitiate the First Amendment right at issue.

20
 21 **2. Defendants' (City) Statement:**

22 On June 14, 2016, Los Angeles Police Department Sergeant Edward Kinney
 23 was assigned to Central Patrol Division Resources Enhancement Services
 24 Enforcement Team (RESET), as the unit Assistant Officer in Charge. The City of
 25 Los Angeles, in response to a May 2012 Notice of Violation by the Los Angeles
 26 County Health Department and in order to create and maintain a safer, cleaner
 27 environment for the general public, has tasked the L.A. Sanitation Watershed
 28 Protection Division with systematic clearing of the skid row area. Approximately

1 every two months, specific streets in Skid Row are cleaned. L.A. Sanitation posts
2 notices of the cleaning every 48 hours in advance of the cleaning.

3 On the date of the incident involving Mr. White, RESET units had been
4 assigned to help facilitate street closures, along with two units from the Department
5 of Transportation Traffic Control. A closure notice was posted for 6th Street from
6 Wall Street to Gladys. Officers were posted at the location and yellow taped stating
7 “Do Not Cross” was strung along 6th Street from Wall east to San Julian. The
8 cleaning involves chemical cleaners and various health hazards because needles,
9 human feces and other hazardous materials are left in the areas to be cleaned.

10 During the course of the cleaning in this location, Plaintiff crossed over the
11 yellow tape approximately four separate times, despite being directed to stay behind
12 the tape. Mr. White was given warnings to stay behind the tape, which he ignored.
13 At one point he stretched the tape approximately 8 feet into the intersection.
14 Following Mr. White’s continued refusal to stay behind the tape, he was arrested by
15 Los Angeles Police Officers, at the direction of Sergeant Kinney. He was arrested
16 for Penal Code 148 (A)(1) for willfully delaying, obstructing any public officer,
17 peace officer or emergency technician in the discharge or attempt to discharge any
18 duty of his or her office or employment. Mr. White was booked and processed at
19 Central Division station, and released on his own recognizance. The City Attorney’s
20 Office did not file charges against Mr. White.
21
22

23 **1.b. Subject Matter Jurisdiction:**

24 The Court has subject matter jurisdiction over the Plaintiff’s claims pursuant
25 to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1343 (civil rights jurisdiction),
26 and 28 U.S.C. § 1367 (supplemental jurisdiction). The Court has jurisdiction to issue
27 declaratory or injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Federal
28 Rule of Civil Procedure 57.

1 **1.c. Legal Issues:**

2 **Plaintiffs contend:** The key legal issues are the probable cause to arrest
3 Plaintiff for videotaping the police in a public place and whether Plaintiff's arrest
4 was in retaliation for the exercise of his First Amendment rights to videotape and to
5 criticize the police.

6
7 **Defendants contend:**

8 The arrest of Mr. White was based upon probable cause, and was lawful and
9 reasonable. Mr. White's videotaping of the Skid Row cleaning had nothing to do
10 with his arrest. There was no retaliation, and no intent to deprive Mr. White of his
11 First Amendment rights.

12
13 **1.d. Parties and Non-Party Witnesses:**

14 Plaintiff is the only party on his side. Members of Plaintiff's organization,
15 LA CAN were present, videotaping his arrest, and witnessing his arrest. In addition,
16 lawyers serving as counsel on *Mitchell v. City of Los Angeles*, 16-cv- 01750 SJO,
17 were also present, although not in the direct proximity of the arrest incident.

18
19 **1.e. Damages:**

20 Plaintiff is entitled to statutory damages under California law of at least \$4000,
21 subject to treble this amount. Based upon other wrongful arrest and detention cases,
22 including two arising in Los Angeles, the range of damages is approximately \$7,500
23 to \$20,000 per person, with the higher damages for those who were arrested.

24
25 **1.f. Insurance**

26 The City of Los Angeles is self-insured.
27
28

1 **1.g. Motions:**

2 Plaintiffs filed a First Amended Complaint At the present time, until discovery
3 is conducted, Plaintiff does not plan to amend to add additional parties, but reserves
4 the right to do so depending upon discovery disclosures. Plaintiff does not now
5 intend to add additional claims and there is no likelihood of transferring venue since
6 all parties are in the Central District, Western Division. P Plaintiff also anticipates
7 possible motions in limine to exclude evidence of any other criminal history or
8 associations with political groups. Plaintiff also intends to bring a motion for
9 summary judgment or summary adjudication on some of the legal issues, depending
10 upon discovery.

11
12 **1.h. Manual for Complex Litigation:**

13 The parties do not believe that this action is subject to all or part of the
14 procedures for complex litigation.

15
16 **1.i. Status of Discovery:**

17 No discovery has begun as of this date. The parties agree to make initial
18 disclosures no later than two weeks after the Scheduling Conference.

19
20 **1.j. Discovery Plan:**

21 At present, the parties do not believe orders are needed limiting or expanding
22 discovery beyond what is permitted under the FRCivPs. Plaintiff anticipates filing
23 written discovery prior to the Scheduling Conference to obtain documentation of his
24 arrest, the plans/reports of the LAPD related to videotaping of officers in public
25 places. t, all communications regarding his arrest, including all entities and databases
26 to which such information was transmitted.

27 Plaintiffs anticipate taking the depositions of each of the named defendants
28 and also anticipate taking the depositions of other officers present and participating

1 in Plaintiff's arrest, as well as any officers at the Central Station who participated in
2 the discussion or decision to charge Plaintiff. Plaintiff also anticipates that, through
3 discovery, he will identify additional individuals within the Los Angeles Police
4 Department who may also be deposed.

5
6 **1.k. Discovery Cut-off:**

7 The parties propose a non-expert discovery cut-off of July 16, 2018.
8

9 **1.l. Expert Discovery:**

10 The parties propose August 10, 2018 as the date for initial expert disclosures,
11 September 7, 2018 for expert rebuttal disclosures, and a discovery cut-off of
12 September 24, 2018 for expert discovery.
13

14 **1.m. Dispositive Motions:**

15 Although the parties have not yet engaged in discovery, both parties anticipate
16 possibly bringing a motion for summary judgment or adjudication.
17

18 **1.n. Settlement:**

19 The parties request mediation with mediator Rick Copeland, Esq. Mr.
20 Copeland is on the ADR Attorney Panel and has extensive experience settling
21 Section 1983 litigation.
22

23 **1.o. Trial Estimate:**

24 The parties presently anticipate the jury trial in this matter to take 2 court days,
25 not including jury selection and opening statements. Defendants may file a motion
26 for bifurcation or, possibly, trifurcation of liability, Monell and damages.
27
28

1 **1.p. Trial Counsel:**

2 Paul Hoffman and Catherine Sweetser will be lead trial counsel for the
3 plaintiffs. Elizabeth Fitzgerald is expected to represent the Defendants. It is likely
4 that other members of the Plaintiff's litigation team and the Los Angeles City
5 Attorney's office will also be involved as trial counsel.

6
7 **1.q. Independent Expert or Master:**

8 The appointment of a master under Rule 33 or independent expert is not
9 necessary.

10
11 **1.r. Timetable**

12 The parties have completed and attached the a Schedule of Pretrial and Trial
13 Dates.

14
15 **1.s. Other issues:**

16 Defendants anticipate that they may file a motion for bifurcation of liability
17 and damages, or trifurcation of liability, Monell and damages.

18 Depending on the nature of discovery, issues may arise concerning the privacy
19 of individuals and police officers.

20 Plaintiffs seek videotaped evidence of the incident and believe no protective
21 order is required for production of the video. However, defendants insist that any
22 videotaped evidence only be produced following the entry of a protective order.

23
24 **1.t. Patent Cases:**

25 Not applicable.

26
27 **1.u. Do the Parties Wish to Have a Magistrate Judge preside?**

28 No.

1
2 Dated: November 6, 2017

Respectfully submitted,

3
4 Law Office of Carol A. Sobel
Schonbrun, Seplow, Harris & Hoffman

5
6 /s/ Carol A. Sobel
7 By: CAROL A. SOBEL
8 Attorneys for Plaintiffs

9 Dated: November 6, 2017

10 Michael N. Feuer, City Attorney
11 Thomas Peters, Chief Asst. City Attorney
12 Cory M. Brente, Asst. Supv. City Attorney
Elizabeth Fitzgerald, Dep. City Attorney

13 /s/ Elizabeth Fitzgerald
14 By: ELIZABETH FITZGERALD
15 Attorneys for Defendants
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SCHEDULE OF PRETRIAL & TRIAL DATES WORKSHEET

Case No. 17-cv-3306 SJO MRW

Case
Name:

Darren "Pete" White v. City of Los Angeles

MATTER	JOINT REQUESTED DATE or PLNTF/DEFT REQUESTED DATE	TIME
TRIAL <input type="checkbox"/> Court <input checked="" type="checkbox"/> Jury Duration Estimate:	November 13, 2018 (Tuesday)	8:30 a.m.
FINAL PRETRIAL CONFERENCE ("FPTC") 4 wks before trial	October 16, 2018 (Tuesday)	2:00 p.m.

MATTER	TIME COMPUTATION	JOINT REQUESTED DATE or PLNTF/DEFT REQUESTED DATE
Amended Pleadings and Addition of Parties Cut-Off (includes hearing of motions to amend)	90 days after scheduling conf	Feb. 12, 2018
Non-Expert Discovery Cut-Off (includes hearing of discovery motions)	at least 14 wks before FPTC	July 16, 2018
Motion Cut-Off (filing deadline)	at least 13 wks before FPTC	July 23, 2018
Initial Expert Disclosure & Report Deadline	at least 9 wks before FPTC	Aug. 10, 2018
Rebuttal Expert Disclosure & Report Deadline	at least 5 wks before FPTC	Sept. 7, 2018
Expert Discovery Cut-Off (includes hearing of discovery motions)	at least 3 wks before FPTC	Sept. 24, 2018
Settlement Conference Completion Date	at least 4 wks before FPTC	Sept. 14, 2018
Motions in Limine Filing Deadline	at least 3 wks before FPTC	Sept. 24, 2018,
Opposition to Motion in Limine Filing Deadline	at least 2 wks before FPTC	October 1, 2018
Other Dates: (e.g., class cert motion cut-off, early mediation, etc.)	at least 90 days after complaint served (unless longer time justified)	n/a

EXHIBIT A